

March 15, 2017

Scott Smithline, Director
Cal Recycle
1001 I Street
Sacramento, CA 95812-4025

Dear Mr. Smithline:

We are writing to express our concerns that the revised five-year plan provided by CARE for carpet stewardship fails to meet the requirements of AB 2398 and fails also to address the concerns your staff raised in the December 20, 2016 Request for Approval (RFA). Very little has changed from October to February in the five-year plan. Modest increases in performance goals were projected in the revised Plan.¹ CARE has failed to provide the requested data and transparency that would lead to the conclusion that it will succeed in accomplishing the meager goals that it has established for the next five years.

The following actions by CARE leave in doubt CARE's ability to carry out the requirements of AB 2398:

- the lack of progress over the first five years,
- the fact that CARE has been out of compliance with the program for the last three years,
- CARE's failure to put forward an adequate proposal for the next five years,
- the fact that CARE has ignored most of the recommendations provided in stakeholder consultation with the California Council on Carpet Recycling, and
- CARE's failure to address adequately most of the issues presented in the RFA, and

Furthermore, Cal Recycle has failed to carry out the requirements of state law with respect to the solid waste management hierarchy articulated in Pub. Res. Code Section 40051(3)(b)- discussed below. Therefore, we recommend that:

1. Cal Recycle reject CARE's stewardship program and start a process that invites a new product stewardship organization to emerge;
2. Cal Recycle follow through on enforcement actions that they have just initiated and levy penalties against the primary CARE decision-makers, the mills included in the Sustainable Fund Oversight Committee; and
3. Cal Recycle should not allow the stewardship program to use diversion as a whole (including export, transformation², and Waste to Energy- WTE-) as a means of counting positive performance- rather it should only count reuse, source reduction, and recycling.

¹ Recyclability went from 50% to 60% goal, no change in goal for market growth of secondary products, same goal for ! reuse, no change in recycling goal (a mere 26% by 2021), a decrease in diversion from landfill rate, no increase in ! the goal of one drop off location per county, and no change in the source reduction goal.

² CAAF and Kiln are defined as transformation in Pub Res Code 40201. !

4. In order to meet the requirements of section 40051(3)(b) of the PRC, Cal Recycle should require that the stewardship program demonstrate a continuous **decrease** in transformation, WTE, and landfill.
5. For an EPR scheme to be most effective, and to reward and stimulate further innovation, part of the consumer fee should vary based on the extent to which the product can be reused and/or recycled. The highest unit fee would be for carpets that cannot be recycled using currently available technology. The fee would be reduced for carpets and carpet tiles that can more readily be recycled, with a further reduction for products that can be reused. We believe that this would provide an actual level-playing field for the most sustainable products on the market.

Supporting our recommendations, in the following pages, we provide a more detailed explanation of how CARE has failed to address the staff findings in the RFA³ of December 20, 2016, and how Cal Recycle has failed to meet its obligations to prioritize reuse, source reduction, and recycling pursuant to the Public Resources Code.

I CARE FAILS TO ADDRESS THE DEC. 20, 2016 RFA FINDINGS ADEQUATELY

FINDING #1. The Plan does not provide enough information about the effectiveness of financial incentives and other Program elements to evaluate whether the recycled output goals (24 percent by 2020 and 26 percent by 2021) would constitute continuous meaningful improvement, nor how the Plan would achieve these goals.

Effectiveness of Incentives, a lack of meaningful improvement, and lack of transparency.

In its revision, CARE failed to provide any reliable rationale or support for the existing subsidies and incentives. The revised Plan only stated that at increased levels of subsidies for non-nylon recycled content (25 cents) and recycling of calcium carbonate (17 cents), the subsidies and incentives were starting to have an impact. The low proposed recycling goal was an issue for Cal Recycle. The target recycling rate of 24% for 2020 is not significant for a 10 year effort and it seemed also that there is a considerable discrepancy between Cal Recycle's estimate of 600,000 tons of carpet per year to landfill in 2014 and CARE's estimate of 173,000 total discards in 2015. Therefore the 2015 recycling rate of 10% of discards may be *significantly* overstated⁴. Cal Recycle insisted that the plan revision needed to include a process for evaluating and improving the baseline formula for estimating the disposal of carpet.

CARE's performance goal for recycling is neither backed up by sufficient data as to how they will achieve it and it's not a significant goal. The revised plan did not increase the goal of 26% by 2021, and since in the first five years, CARE only increased the recycling rate from 8%-11%, there needs to be a substantive backing of the claim that they can increase from 11%-26%. Nor did CARE address the criticism about how discards are calculated. Cal Recycle asked for transparent results that explain the data or hypotheses that support the assessment levels and stated that the economic tool created by CARE's contractor may provide essential data to provide more targeted and timely market support, but the 2017 Plan did not provide sufficient transparency to support this; CARE once again reiterated that it had a contractor that had

³ This is partially based on an analysis commissioned by Changing Markets to Eunomia Research & Consulting ! attached hereto. !

⁴ The Eunomia report suggests it may be closer to 2.8% if we rely on the discards rate provided by Cal Recycle. !

developed an assessment protocol, but did not provide the type of data that addresses the request for transparent results.

Alternative Subsidies

Cal Recycle provided as examples of alternative subsidies incentives for installers to recycle rather than dispose of carpet, subsidies to reduce tip fees at collection sites, and payments for equipment to identify resin types. CARE responded that the Stewardship Planning Committee (SPC) took these ideas into consideration and rejected them. Cal Recycle's suggestions seem sensible, and certainly merit more detailed consideration than simply 'having been discussed.' Given that the program has been running since 2011, it is remarkable that such ideas have not been subject to detailed analysis, at the very least to explain why they haven't been adopted. CARE's response goes on to discuss discounted drop-off fees, admitting that "this subsidy would likely increase the diversion of PCC," but claiming that "it would ultimately hinder CARE's implementation of other incentives." Such a hindrance would, of course, only occur if there were no overall increase in funds. CARE then provides an illustration of how expensive it would have been to have subsidized a discounted tipping fee of \$48/ton for the 1,500 tons collected in 2016 (Q1-Q3), claiming this would have cost CARE \$720,000. The full basis of this calculation is not presented, but if the intention was to multiply \$48 by 1,500 tons, then the total should be \$72,000, rather than \$720,000. Given that current sales are reported as 94 million square yards per year, then rather than the 'additional 1 cent per pound assessment' stated in CARE's response, an additional \$72,000 per annum would mean an assessment increase of 0.08 cents per square yard. It's not clear whether CARE's response meant to say 'per square yard assessment' instead of 'per pound assessment', as written. This seems likely, as on a per pound basis, given the average weight of carpet of 4.39lbs/yd, the increase in the assessment would be just 0.02 cents. With faulty numbers, CARE has not made the case that such a subsidy is too expensive.

Preserving Carpet Industry Market Share

Cal Recycle stated that preserving market share of carpet versus other flooring types should not be a material consideration in assessment of the fee and noted that the Legislature deemed such outcomes (decreased market share for carpet) acceptable. CARE continues to insist that this is a factor in establishing fees.

Faulty Reporting of Diversion from Landfill Data

In the revised Plan, the table shows 22% of discards diverted in baseline year and that in 2015, 23% of PC carpet discards were diverted. In the narrative, they say that the average has been 30.8% since the program began and they also say that in 2015 30% was diverted.

Finding #2. The 2017 Plan does not discuss how stakeholder input, especially the recommendations of the newly formed California Council on Carpet Recycling, is evaluated. The revision did not address the major recommendations from the stakeholder consultation process. CARE admits that the latest changes to the 2017 Plan have not been discussed with the Council. While a webinar was held on Feb. 9 to share changes and discuss ideas proposed by the Council that were incorporated into the Plan, the ideas not incorporated into the Plan were presumably not discussed. Only a few ideas of the Council were incorporated into the Plan, but these are conditional inclusions, such as micro-grants for reuse and collection that will be "considered if funds allow. Another caveat was provided in response to a core Council suggestion: "The SPC has taken into consideration many ideas from many sources, including the Council, for influencing the supply chain, such as installer incentives and payment

of drop-off site tip fees. Current funding is not sufficient to add such large increases in subsidies at this time.”

Finding #3. The 2017 Plan does not sufficiently address reasonable consumer access to recycling services in critical population centers in California. Cal Recycle questioned the rationale behind the one center in each county goal as it could leave many California residents without convenient access to a recycling opportunity. The revision failed to address the need for reasonably convenient locations. It discusses the possibility of conducting a convenience study, but makes no commitment to do it, making this an underwhelming response.

Finding #4- CARE’s proposal to reduce subsidy guarantees to six months does not mitigate the uncertainty and high risk in investment for processors and others to establish and grow critical California infrastructure for long-term carpet recycling.

CARE’s revision response is that ‘this finding has been resolved,’ reverting to the 12 month guarantee in the revised plan, but with the addition of a proration formula to act as a “safety valve provision deemed necessary to ensure liquidity of available funds.” This would effectively limit the financial exposure of CARE to the (arguably unlikely) event that recycled output increases significantly. Further analysis of this provision and its potential impact in limiting the effectiveness of a 12 month guarantee to limit risk will be possible only after the proration formula has been agreed (it is a concept only at present), the date for which has been stated in the revised Plan as October 2017.

Finding #5- In the 2017 Plan, CARE has inappropriately redefined its primary method for measuring progress towards achieving its diversion and recyclability goals (from proportion of all discards to proportion of gross collections). CARE responded by stating that this change was unintended and that the use of gross collections as a baseline was meant to provide an additional metric to the existing one using discards, and not a substitute for it. Both the formula and the text under Goal #5 on page 17-18 in the revised Plan have thus been changed back to a baseline of discards rather than gross output, though the target goal has also reduced from 90% to 60%.

Finding # 6 - The 2017 Plan fails to identify or evaluate the education and outreach (E&O) activities most likely to result in increased recycling and diversion.

To address this issue, CalRecycle recommended a shift from the current focus on ‘process-based’ evaluation metrics to ‘performance-based’ ones, as well as further engagement with installers and building owners alongside a more adequate budget for E&O activities. In order to achieve efficiency in this budget, a system of prioritization for various E&O activities, in which “individual activities are correlated to actual increases in recycling as the Program matures” is also advocated.

In its revised Plan, CARE recognized the importance of Cal Recycle’s comments and introduced a new section on E&O activities, outlining the various ways in which the Plan seeks to engage with the range of stakeholders in the PCC supply chain, and, importantly, including installers and building owners in this list. Greater transparency is provided in the linking of E&O activities to diversion rate and market development goals in the Plan, as well as in the rationale for a regional, rather than nationwide public information campaign in CARE’s letter. However, the overall goal of E&O activities remains unchanged, with CARE’s letter committing only to “continue to explore ways to get indicators of progress” and the revised Plan stating clearly that “it is our *assumption* that outreach success will contribute to operational success. The outreach

plan is not designed to be directly correlated to operational program goals such as increasing recycled output.” In addition, the suggested budget for E&O activities remains unchanged. As such, Cal Recycle’s concerns have been largely unaddressed. Committing to a revised budget to support a study to evaluate existing indicators, and explore new ones, (perhaps alongside a similar study considering the effectiveness of economic incentives) would have been a more appropriate response.

Furthermore, no consumer-facing education program has been proposed. An effective customer education program would require better production labeling about recycled content, recyclability and toxicity be developed (which also requires improved certification systems) and an education program for retailers about how to educate customers would be required.

Finding # 7-The 2017 Plan does not sufficiently address increasing the recycled content in carpet itself (as opposed to secondary products), which could significantly boost end markets for PCC material. CalRecycle argued that closed loop recycling be prioritized as a more stable market for PCC materials than the (less environmentally beneficial) ‘downcycling’ efforts that have dominated the Plan to date. CalRecycle concluded that: *The Plan neglects a key market development strategy that is within the control of the carpet manufacturers...which is to increase their own use of PCC materials in manufacturing new carpet.* CARE’s revision provides examples of emerging technologies in this area, but fails to offer support or an incentive for market development in these areas, stating on Page 22 of the revised Plan that: “Since the introduction of such newly designed products will take time to penetrate the market, CARE will monitor the sales of those products and, beginning in Year 4 of this plan, CARE will determine the timing, based on estimated lifespan of new products, to begin the education process with retailers and installers for recycling the new products.” This commits CARE to 4 additional years of inaction on this front, after which they only commit to a *consideration* of the timeliness of spreading awareness of the topic. In addition, Cal Recycle’s mention of previous work that recommended changes to standards for carpet design and manufacture as a potential starting point for delivering recyclability goals is ignored. This is entirely inadequate, as incentivizing (or potentially mandating) the incorporation of recycled content in new carpets, and their recyclability, should be at the heart of any meaningful EPR scheme for carpets in California.

II. CAL RECYCLE’S FAILURE TO PROMOTE THE PRIORITIES OF INTEGRATED WASTE MANAGEMENT IN THE PUBLIC RESOURCES CODE

Section 40051 of the CA Public Resources Code requires the Department and local agencies to:

(a) *Promote the following waste management practices in order of priority:*

(1) *Source reduction.*

(2) *Recycling and composting.*

(3) *Environmentally safe transformation and environmentally safe land disposal, at the discretion of the city or county.*

(b) *Maximize the use of all feasible source reduction, recycling, and composting options in order to reduce the amount of solid waste that must be disposed of by transformation and land disposal. For wastes that cannot feasibly be reduced at their source, recycled, or composted, the local agency may use environmentally safe transformation or environmentally safe land disposal, or both of those practices.*

3(b) instructs the state to maximize source reduction and recycling. Reuse is considered by Cal Recycle as part of recycling. However, we submit that allowing the stewardship organization to count a variety of forms of diversion (exports, CAAF, Kiln, and WTE) as part of its performance drives against this mandate. The fact that the combined percentage of “transformation,”⁵ WTE, and export have continued to increase each year and have exceeded the percentage of recycling over the last three years, demonstrates that the carpet industry is increasingly relying on various forms of burning of carpet waste.

This trend will continue in the five-year plan revision proposed. It shows a performance goal for 2021 of 60% of discards that will be diverted via reuse, recycle, export, WTE, kiln and CAAF. Subtracting the recycling goal of 26% by 2021, then the remaining 34% of diversion is either exported or treated in WTE, Kiln and CAAF. Since CARE is supposed to eliminate exports, that would be a huge increase in the rate of WTE, kiln, and CAAF from 2015, which was 9% for kiln and energy recovery- so a 4-fold increase in burning is essentially hidden in these numbers (95-34%). Whereas only a 2.5-fold increase in recycling predicted (10%-26%).

The program should prioritize recycling of already recyclable materials, especially those that can be recycled in a closed loop. Providing higher subsidies and incentives for PET and PP carpet recycling rather than easier-to-recycle nylon 6, is not the most effective means of boosting recycling and recycled content rates, and it unfairly favors the least recyclable manufacturing segment of the industry. Rather, the SO should structure consumer fees much higher for less recyclable materials, such as PET and PP, and lower for easily recycled carpet, such as nylon, in order to make recyclable nylon more cost competitive with its cheaper competitors, notably PET.

In sum, we find that the overall impact of the program in terms of achieving recycling has been negligible to date and the revised plan provides no data or compelling support for the planned program of incentives and subsidies having significant positive impact. Meanwhile, the industry finds it easier to send hard to recycle carpets to be burned in various facilities (WTE, Kiln, CAAF) that emit carbon and toxic chemicals and waste resources that could be used to make new products. Cal Recycle should find CARE out of compliance again, enforce penalties on the mills that are primary decision-makers, reject CARE as the stewardship organization, and comply with the Integrated Waste Management priorities established in state law.

Sincerely,



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Campaigns Director
Changing Markets



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⁵ The definition of “transformation” is in the Pub Res Code Section 40201. “Transformation” means incineration, pyrolysis, distillation, or biological conversion other than composting. “Transformation” does not include composting, gasification, EMSW conversion, or biomass conversion. *Amended by Stats. 2013, Ch. 411, Sec. 7. Effective January 1, 2014.*

WTE therefore is not transformation and seems to have no place in this hierarchy. However, it is still lumped in with the diversion reporting, along with CAAF and Kiln. We consider all processes used to burn carpet to be forms of incineration, despite the state code definition. WTE, Kiln, CAAF, pyrolysis, gasification all waste valuable resources, drive against the circular economy, increase GHG and other toxic emissions and once the capacity is built, it needs to be fed, providing locked-in demand for waste for the life of the facility.